IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CONTEMPT APPEAL NO.6 OF 2007
IN
(SUO MOTU) CONTEMPT PETITION NO.189 OF 2005
IN
INT. NOTICE NO.660 OF 2002
IN
RAD & E SUIT NO.1155/1905 OF 2002

Anwar Usman Moulvi .. Appellant
v/s.
V.D. Kavatkar,
Registrar, Small Causes Court, Bombay and others. .. Respondents

Mr. J.S. Kini i/by Mr. Suresh Dubey for the appellant.
Mr. Jimmy Mehta i/by Mr. H.G. Bhambhani for the respondent No.1.
Ms. J.P. Thakkar for the respondent No.2.

CORAM : J.N. PATEL AND A.A. SAYED, JJ.
DATED : 4TH OCTOBER, 2007

P.C.

Heard the learned counsel for the parties.

2. The appellant challenges the judgment and order dated 27/28th August, 2007, passed by the learned Single Judge holding the appellant guilty of having committed a civil contempt of court but accepting his apology and instead of sentencing him, directed that he may be removed from the Receivership as agent of the Court Receiver.

3. The proceedings came to be initiated on the reference made by the Judge, Small Causes Court, Mumbai under the Contempt of Courts Act, 1971 where the appellant-contemnor was reported to have committed breach of the

injunction order after he was appointed as agent of the Court Receiver by order dated 13th and 14th October, 2003 and was put in possession of the property as agent of the Court Receiver on 20th April, 2005 and thereafter, he has been found to have inducted certain persons in the premises contrary to the terms and conditions on which he was appointed as agent of the Court Receiver.

4. The learned counsel appearing for the appellant submitted that the question which arises for consideration in this appeal is whether the court, dealing with the contempt mattes, can pass ancillary orders other than holding a person guilty or not guilty in accordance with the Contempt of Courts Act. According to him, dislodging the appellant from the premises is beyond the jurisdiction of the court, it deserves to be quashed and set aside. Another contention is that the appellant was already in possession of the suit premises prior to the filing of the suit and that, it was not fair on the part of the learned Judge to oust the appellant from the premises.

5. On going through the facts and circumstances which lead to the passing of the impugned judgment, we find that there is no dispute over the fact that the appellant was allowed to continue in the premises as agent of the Court Receiver and subsequently, it was found that he had committed breach of the order by inducting the persons in the premises and came out with a plea that they are working for him as Commission Agent. The learned Single Judge has examined the issue and considered all the aspects of the matter and has also discussed the various authorities canvassed by the parties.

6. In our view, the learned Single Judge was rather kind enough not to sentence the appellant though he found him guilty and was justified in removing him from Receivership as agent of the Court Receiver as the appellant

committed breach of the terms and conditions of the agreement of agency with the Court Receiver. We do not find this part of the order can be said to be an ancillary order. On the other hand, a person who has been found guilty of having committed contempt of the court, in the present case, the appellant having committed breach of the agreement of agency which he had with the Court Receiver by virtue of which he was allowed to continue in the occupation of the premises, the order removing him from the receivership as agent of the Court Receiver was justified in the facts and circumstances of the case and in order to rectify wrong committed by him.

7. In so far as apprehension expressed by the learned counsel for the appellant that there was no necessity for passing of such an order as the trial has almost come to an end, in our opinion, does not make any difference as the premises were custodialegis that is under the possession of the Court Receiver and in case the appellant succeeds in the matter, he can be put back in possession by way of restitution. Therefore, we do not find any merit in the appeal and the same is dismissed.

8. The learned counsel for the appellant submits that the appellant proposes to challenge this order. The order may be kept in abeyance for a period of four weeks. Though it is highly objected by the counsel for the other side, we find that fair opportunity deserves to be given to the appellant to enable him to approach the Apex Court and therefore, the parties can be directed to maintain status-quo. The effect and operation of the impugned order is therefore, stayed for a period four weeks on the condition that in case the appellant moves the Supreme Court in the matter, he will give 48 hours notice in advance to the opposite parties.

(J.N. PATEL, J.)

(A.A. SAYED, J.)